

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEISHA ANGLIN,

Plaintiff,

- against -

GAIL MCDONALD, M.D., DARA LYNN
FORRESTER, M.D., JACQUELINE PAREJA,
M.D., and BRONX-LEBANON HOSPITAL
CENTER.

Defendants.

USDC SDNY
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DATE FILED: NOV 14 2006

06 Civ. 5676 (PAC)

OPINION
AND ORDER

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HONORABLE PAUL A. CROTTY, United States District Judge:

This action for medical malpractice was brought by Plaintiff Keisha Anglin on or about February 21, 2006, in the Supreme Court of the State of New York, Bronx County. On July 27, 2006, Defendant Gail McDonald ("McDonald") removed the action to this court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2). McDonald now moves to substitute the United States as defendant pursuant to 28 U.S.C. § 2679, and to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. The deadline for other parties to submit their opposition to this motion was October 5, 2006. No opposition having been registered with the Court, the motion is granted.

Michael J. Garcia, the United States Attorney for the Southern District of New York, has certified pursuant to 28 C.F.R. § 15.4 that McDonald was acting within the scope of her federal employment at the relevant times alleged in Plaintiff's complaint.

Therefore, under 42 U.S.C. § 233, an action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 (the "FTCA"), is Plaintiff's sole available remedy as to her claims against McDonald. Under the FTCA, Plaintiff is required to exhaust her administrative remedies prior to commencing suit. Plaintiff has failed to exhaust those remedies, and so her claim against the United States must be dismissed.

For the foregoing reasons, Defendant Gail McDonald's motion to substitute the United States as a defendant and dismiss the claims against them is GRANTED. The sole basis for the removal of this action to this Court, and of this Court's original jurisdiction over it, was McDonald's status as a federal employee. The claims against McDonald and the United States having been dismissed, the case is remanded to the Supreme Court of the State of New York pursuant to 28 U.S.C. § 1367(c)(3). The Clerk of the Court is directed to close out this case.

Dated: New York, New York
November 14, 2006

SO ORDERED


PAUL A. CROTTY
United States District Judge